

No. 9/5/84-Lab/6492.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Karwa Enterprises, Plot No. 5, Sector 6, Faridabad.

**BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD**

Reference No. 26 /1983

between

**THE MANAGEMENT OF M/S KARWA ENTERPRISES, PLOT NO. 5, SECTOR 6, FARIDABAD.
AND ITS WORKMAN**

Present :—None.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the Management of M/s Karwa Enterprises, Plot No. 5, Sector-6, Faridabad, and its workmen, to this Tribunal, for adjudication :—

- (1) Whether the workers should be designated and paid according to the nature of job performed by them ? If so, with what details ?
- (2) Whether the termination of Shri Bhiku Ram was justified and in order ? If not, to what relief he is entitled ?
- (3) Whether the workers should be paid overtime wages at double the rate of ordinary wages ? If so, with what details ?
- (4) Whether the latrines with sanitary condition should be provided? If so, with what details ?

Notices of the reference were sent to both the parties. It may be mentioned that on 30th June, 1984, none appeared on behalf of the workmen and as such *ex parte* proceedings were ordered against them. On the last date of hearing, none appeared on behalf of the Management even though they were represented earlier and as such *ex parte* proceedings were ordered against the Management. It appears that both the parties are not interested in the reference. The award is passed accordingly.

R. N. BATRA,

Dated, the 25th August, 1984.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 818, dated 30th August, 1984.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-Lab/6493.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Shashi Services, Plot No. 5, Sector-6, Faridabad.

**BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD**

Reference No. 263/1983

between

**THE MANAGEMENT OF M/S SHASHI SERVICES, PLOT NO. 5, SECTOR-6, FARIDABAD
AND ITS WORKMEN**

Present :—None.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute between the Management of M/s Shashi Services, Plot No. 5, Sector-6, Faridabad and its workmen, to this Tribunal, for adjudication :—

Whether the workers should be designated and paid according to the nature of work being performed by them ? If so, with what details ?

Notices of the reference were sent to both the parties. It may be mentioned that on 30th June, 1984, none appeared on behalf of the workmen and as such *ex parte* proceedings were ordered against them. On the last date of hearing, none appeared on behalf of the management even though they were represented earlier and as such *ex parte* proceedings were ordered against the management. It appears that both the parties are not interested in the reference. The award is passed accordingly.

Dated the 25th August, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 819, dated 30th August, 1984.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

No. 9/5/84-6-Lab/6494.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Electronic Ltd. 26 N. I. T., Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 43/1981

between

SHRI HANS RAJ BHATIA WORKMAN AND THE MANAGEMENT OF M/S ELECTRONICS LTD., 26, N.I.T., FARIDABAD.

Present : —

Shri S. S. Gupta, for the workman

Shri Jaswant Singh, for the management

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Hans Raj Bhatia, workman and the Management of M/s. Electronics Ltd., 26, N. I. T., Faridabad, to this Tribunal, for adjudication :—

Whether the termination of services of Shri Hans Raj Bhatia was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated the 27th March, 1981, alleged that he was working with the respondent Management since 12th February, 1959 and that his work and conduct was satisfactory. It was further alleged that his services were terminated by the Management on 6th July, 1980 without assigning any reason and that the said termination was illegal and unjustified and that

the termination amounted to retrenchment as the provisions of Section-25-F of the Industrial Disputes Act, 1947, were not complied with by the Management, due to which the claimant was entitled to reinstatement with full back wages.

3. The Management in their written statement dated 24th April, 1981, pleaded that the reference of the dispute by the Government to the Tribunal was invalid and incompetent because the workman was employed with the management as Supervisor, drawing wages of Rs. 600 per month and that the claimant was thus not a workman as defined in clause (s) of Section 2 of the Industrial Disputes Act, 1947. It was also pleaded that the Government had firstly declined to make reference and as such the Government was precluded from making the reference. It was further pleaded that the claimant was employed on 12th December, 1959 and he worked in various capacities as Assembler, Pipe Bender and Mechanic till 1st April, 1972 when he was promoted to the Supervisory post of a Chargeman, but was redesignated as a Supervisor with effect from 1st August, 1977 and that he continued on the said post till 6th July, 1980. It was further pleaded that when his services were terminated he was drawing Rs. 600 per month. It was also pleaded that claimant was working as Supervisor and used to draw the material from the Store and also used to sanction leave and in some cases recommended grant of leave to the workmen. It was further pleaded that the claimant had no right to claim any relief.

4. The claimant in his rejoinder dated the 20th May, 1982, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 21st May, 1981 :--

(1) Whether the concerned employee is a workman under Industrial Disputes Act ? (OPW)

(2) Whether the reference is bad on account of prior refusal by the State Government ? (OPM)

(3) Whether the termination of service of Shri Hans Raj Bhatia was justified and in order ? If not, to what relief is he entitled ? (OPM).

6. It may be mentioned that on issue No. 1, the claimant examined Shri Rama Nand Workman as WW-1, Shri Tilak Raj, workman as WW-2 and himself appeared as WW-3. The Management examined Shri Gurmail Singh, Foreman as MW-1 and Documents, Exhibit M-1 to M-33 were tendered into evidence,—*vide* orders dated the 9th December, 1982, this issue was decided in favour of the claimant by my learned Predecessor holding that the claimant was a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947.

7. Thereafter the Management examined Shri Mulk Raj, Assistant Personnel Manager as MW-2 while the claimant appeared in the witness box as WW-3 and the document Exhibit W-1, which photo-stat copy of the letter dated the 6th July, 1980 terminating the services of the claimant, was produced. After hearing the arguments of both the sides and going through the evidence, my findings on the remaining issues area as under :—

Issue No. 2:

8. No evidence has been led on this issue by the Management. Consequently issue No. 2 is decided against the Management.

Issue No. 3 :

On issue No. 1 it was found that the claimant was a workman. He was in service since 12th December, 1959 as admitted by the Management in their written statement. Exhibit W-1 is the copy of letter dated the 6th July, 1980 by which the services of the claimant were terminated. In this letter the claimant was informed that his services were no longer required with immediate effect and he will be paid a month's salary in lieu of notice period and was advised to contact Accounts Deptt on any working day to collect his dues in full and final settlement after obtaining clearance certificate from all concerned. In this letter, it is nowhere mentioned that any compensation was offered or paid to the claimant. Moreover, no reasons has been given as to why the services of the claimant were being terminated. It will thus be seen that the provision of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with before terminating his services in as much as no compensation was paid to him nor prescribed notice was served on the appropriate Government. Consequently, the termination of service of the claimant was not justified and in order.

8. The representative of the Management argued that the claimant remained gainfully employed during all this period and as such he was not entitled to claim back wages. The representative of the workman argued that no such plea was taken by the Management in the written statement due to which no issue was framed and as such this point could not be taken into consideration. Reliance was placed on the rulings reported as Lalit Gopal Berri and M. V. Hirway, 1973-II-LLJ-page 22, in which it is laid down that the question whether the employee had been gainfully employed during the relevant period must ordinarily be raised and agitated not by the employee, but by the employer in the proceedings before the Labour Court or Tribunal. The second ruling is reported as Hari Palace, Ambala City versus Presiding Officer, Labour Court, Rohtak and another, 1980-Lab.I.C. page 123, in which it is laid down that where the dismissal of an employee is held illegal and the

employee is reinstated with continuity of service, the normal relief would be the payment of full wages from the date of dismissal, and it is for the employer to raise this matter and prove that the employee had been earning wages for the whole or any part of the period in question. The third ruling is reported as *Postal Seals Industrial Co-operative Society Ltd.*, Aligarh *versus Labour Court II Lucknow and others*, 1971-I-LLJ-page 327, in which it is laid down that where no point was taken in the written statement, the appellant was not permitted to raise new point. These rulings are distinguishable in facts, because in the present case both the sides have led evidence on this point after the decision of issue No. 1. The management examined Shri Muluk Raj Assistant Personnel Manager as MW-2 who stated that after termination of his service, the claimant was doing transport business and he owned two trucks nos H. R. C. 6028 and H.R. C. 6727 and that he had seen the claimant driving the trucks and that his income was Rs. 2500 per month. Shri Hans Raj Bhatia, claimant has appeared as WW 3 on 28th July, 1984 and stated that in his examination-chief that he was employed as apprentice since 1959 and that after some period he was made Assembler. He further stated that after some period he was promoted as Chargeman and that his services were terminated on 6th July, 1980. In cross examination, he stated that he was not registered owner of any truck. When he was further examined, he stated that he remained owner of truck for some time but he could not tell the exact period. He further stated that the Truck No. 6727 was owned by him for about 2/4 months, which was purchased by him through his brother-in-law. He further stated that he was employed as conductor at Rs 200 per month. He then stated that he asked his brother-in-law to purchase truck in his name so that he could earn livelihood, and that Truck No. 6028/HRU was purchased in his name in the year 1980, but his brother-in-law turned him out from the business after 2/3 months due to losses in the business. He then stated that his brother-in-law was doing transport business for the last 10 years. He further stated that he did not know how many trucks were owned by him. He then stated that he did not feel it necessary to make any enquiry from his brother-in-law regarding the transfer of truck because the amount was invested by him. He then stated that his brother-in-law was alive and was residing at Faridabad.

9. From the cross examination of the claimant, it is clear that he had been purchasing the truck and admitted having purchased truck No. 6727 and then truck No. 6028/HRU. No document has been produced by the claimant to show that these trucks have been transferred by him in the name of his brother-in-law. He has not produced his brother-in-law in the witness box even though his brother-in-law was residing at Faridabad. No accounts have been produced by the Claimant to show that he incurred losses in the business. The claimant admits that the trucks were purchased by him through his brother-in-law to earn his livelihood. The Management has, therefore, succeeded proving that the claimant had purchased trucks after the termination of his services to earn his livelihood and his income from these trucks cannot be less than Rs. 600 per month. Under all these circumstances, the claimant is not entitled to back wages.

10. In view of the above discussion it is held that the termination of services of the claimant by the Management was not justified and in order due to which he is entitled to reinstatement, but he is not entitled to claim back wages for the reasons given above. The award is passed accordingly.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated, the 24th August, 1984.

Endst. No. 820, dated 30th August, 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab./ 6495.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/S Busching Schmitz Private Ltd. 18/6, Mathura Road, Faridabad

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 3/1981.
between

THE MANAGEMENT OF M/S BUSCHING SCHMITZ LTD. 18/6, MATHURA ROAD, FARIDABAD

Present:—Shri M.K. Bhandari for the workmen.
Shri K.P. Aggarwal, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section () of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the management of M/s Busching Schmitz Private Ltd., 18/6, Mathura Road, Faridabad, and its workmen, to this Tribunal for adjudication :—

- (1) Whether the lay-off of 7 workmen from 17th July, 1980 and 13 workmen from 23rd July, 1980 was justified and in order ? If not, to what relief the workmen are entitled to ?
- (2) Whether the retrenchment of 22 workmen whose names are shown in Annexure A was justified and in order ? If not, to what relief the workmen are entitled to ?

2. Notices were issued to both the parties. The claimants in their claim statement dated 11th May, 1981 alleged that they were members of Faridabad Kamgar Union and that the said Union served a notice of demand to the respondent on 22nd November, 1978 which was not relished by them and they dismissed certain employees and their case was referred for adjudication by the Government. It was further alleged that the respondent laid off 7 workmen on 17th July, 1980 and 13 workmen on 23rd July, 1980, irrespective of the seniority list and without following the procedure laid down in the Industrial Disputes Act, 1947 and that no compensation was paid to the workmen or any reason was assigned. It was then alleged that 19 workmen were not allowed to join duty on 20th August, 1980 while remaining one workman was stopped at the gate of the factory on 22nd August, 1980 and two workmen on 27th August, 1980. It was alleged that the termination of service of the workmen was against the provisions of the Industrial Disputes Act and as such they were entitled to reinstatement with full back wages.

3. The respondent in their written statement, dated 20th July, 1981 pleaded that seniority list of all the categories has exhibited on the notice-board no objection was received in that respect. It was further pleaded that the factory was lying closed for the last one year and that there was no work. It was then pleaded that the management tried its best to procure some orders but having ultimatum failed. The workmen became surplus and they were retrenched and they were offered compensation due to the. It was then pleaded that about half of the workmen had accepted compensation, etc. It was also pleaded that lay off of the workmen was within the framework of the Industrial Disputes Act, 1947.

4. On the pleadings of the parties, the following issues were framed on 11th August, 1981 :—

- (1) Whether the lay off of 7 workmen from 17th July, 1980 and 13 workmen from 23rd July, 1980 was justified and in order ? If not, to what relief the workmen are entitled to ?
- (2) Whether the retrenchment of 22 workmen whose names are shown in Annexure A was justified and in order ? If not, to what relief the workmen are entitled to ?

O.P.M.

5. It may be mentioned that the management has examined two witness and documents Ex. M-1 to M-23 have been tendered into evidence. The workmen have examined one witness and documents Ex. W-1 and W-2 have been tendered into evidence. I have gone through the entire evidence and have heard the representatives of both the parties.

6. It may be mentioned at the outset that MW-1 Shri Gurdip Singh, Managing Director of the Respondent, stated that 11 workmen had settled their accounts with the management.—vide Vouchers Ex. M-24 to Ex. M-34. These vouchers relate to Sarvshri Kamla Saran P.G. Lalan Parsad, Bala Kishan, Inder Pal, Kewal Krishan, Mahabir, Vikram Singh, G.K. Kurup, Ram Harash, S.K. Dass and Ravindran Pillay. There is no evidence in rebuttal. In view of the testimony of Shri Gurdip Singh, Managing Director of the respondent and recitals made in the documents Ex. M-24 to M-34, the dispute between these 11 workmen and the management stands because the documents show that the amount were received by them from the management in full and final settlement of their claims. My findings regarding remaining 11 workmen, namely, Sarvshri 1. G.C. Chandella 2. Dinesh Chand, 3. Jagdish Parshad, 4. Ram Roop, 5. Kumar Dass, 6. Balai Dass, 7. Mohamed Hanif, 8. Jag Narain, 9. Nawaz Ali, 10. Babu Ram Gupta, and 11. Khushi Ram, are as under :—

Issue No. 1.

7. It was argued by the representative of the management that this issue was vague because names of the workmen who were laid off were not given. A perusal of the demand notice which led to the making of present reference goes to show that 20 workmen were laid off in the first instance by the management and thereafter their services were terminated alongwith two more workmen. Consequently the workmen who were laid off are not different persons and are included in the last which forms Annexure A of the reference made by the Government. Moreover, MW-1 Shri Gurdip Singh stated in his examination-in-chief that the workmen were laid off by them. He further stated that the seniority list was pasted on the notice-board was Ex. -I. The workmen were laid off in the month of July, 1980 while list Ex. M-1 was prepared on 14th August, 1980. Consequently this list does not help the management with regard to the workmen who were laid off in July, 1980. According to the provisions of section 25-C of the Industrial Disputes Act, 1971, laid off workmen are entitled to compensation.

According to section 25-M of this Act, no workman is to be laid off except with the previous permission of the competent authority unless such lay-off is due to the shortage of power or natural calamity. The case of the management is that due to lack of funds and orders, they had to retrench the workmen. Consequently, there is no evidence that the laid off workmen were paid compensation or requisite permission was obtained from the competent authority and thus the provisions of section 25-C and 25-M of the Industrial Disputes Act, 1947 have not been complied with and as such lay-off of these workmen was not justified and in order? The issue is decided accordingly in favour of the workmen.

Issue No. 2

8. MW-2 stated that services of the workmen were retrenched in August, 1980 and that the notices were sent to the workmen in that respect which were Ex. M-2 to M-23. He further stated that amount was sent to the workmen by money orders and that Ex. M-36 and M-37 were the photostat copies of the receipts of the money-orders. He further stated that Ex. M-35 was the seniority list which was sent to the Government. Shri G.C. Chandella, workman has appeared as WW-1 and stated that no notice regarding retrenchment was given to the workmen and that seniority list was also not pasted. He further stated that no amount of compensation was paid to them. The seniority list Ex. M-1 was prepared on 14th August, 1980. The notices Ex. M-2 to M-23 are dated 19th August, 1980, in which it is mentioned that the services of the workmen were being terminated with effect from 20th August, 1980. These documents do not show that the amount due to the workmen was either offered or sent to the workmen on 20th August, 1980. On the other hand, money-order receipts Ex. M-36 and M-37, go to show that same are dated 25th April, 1981. According to the provisions of section 25-F of the Industrial Disputes Act, 1947, the workman has to be given one month 'notice in writing indicating reasons for retrenchment or the workman has to be paid the amount in lieu of such notice and further that at the time of retrenchment, the compensation has to be paid to the workman concerned. In the rulings reported as *Mohan Lal v/s Bharat Electronics Limited, 1981-I-LIJ*—page 70, it is laid down that where pre-requisite for valid retrenchment as laid down in section 25-F had not been complied with, retrenchment bringing about termination of service was *ab initio* void. In the rulings reported as *Surendera Kumar Verma and others v/s Central Government, Industrial Tribunal, New Delhi, 1981-I-LIJ*—page 386, it is laid down that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement with full back wages but there may be exceptional circumstances which make it impossible to do so and for instance where the industry might have closed down. In the rulings reported as *Rajasthan Canal Project Vidyayanagar Circle, through State of Rajasthan v/s Rajasthan Canal Rastriya Mazdoor Union Suratnagar and another, 1976-II-LIJ*, page 25, it is laid down that merely the readiness on the part of the employer to make payment of the retrenchment compensation is not sufficient, but there must be either an offer or tender or actual payment to the workman concerned. As already mentioned above, the management has failed to prove that the provisions of Section 25-F of the Industrial Disputes Act were complied with because the amount due was not offered or remitted to the workmen on 20th August, 1980 and money order's receipts show that the same was remitted on 25th April, 1981. Evidence from the workmen side is that this amount was also not received by them. Non-compliance of the provisions of the section 25 of the Industrial Disputes Act, therefore, stands proved.

9. It was argued on behalf of the management that the factory was lying closed with effect from April 1981. Copy of the judgement of the Hon'ble High Court, Punjab and Haryana, Ex. M-52, and copy of the judgement of the Labour Court Ex. M-53 have been produced in this respect. These documents go to prove that the factory is lying closed since April, 1981. MW-2 Shri Gurdip Singh, Managing Director, made similar statement. MW-2 Shri V.R. Murti, Store Keeper also stated that the factory was lying closed. In the rulings reported as *U.P. Electricity Supply Co. Ltd. versus The workmen and others, 1971-II-L.L.J.*, page 526, it is laid down that in case of closure of the factory, it may be that an adjudication which concerns only the future working of the industry becomes redundant when the industry itself comes to an end but if the dispute is one which relates to the past working of the industry and in particular where the claim of the workman is for benefits which accrued to them in the past it can hardly be said that the adjudication is without any purpose. In the rulings reported as *Tata Oil Mills Company Ltd. and Workmen of Kannitta Establishment, 1980-I-LLN*, page 165 it is laid down that where the factum of closure is admitted or established, it is not for the Tribunal to go into the question as to the motive of the management to close down the establishment. Since the respondent factory is lying closed since April, 1981, therefore, following the above rulings, the 11 workmen in question are not entitled to reinstatement but they are entitled to full back wages during the lay-off period as well as from the date of termination of their services up to April, 1981. The award is passed accordingly.

Dated 3rd September, 1984.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 906, dated 4th September 1984.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.